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ART. I. — AN ERIE RAID.

HISTORY scarcely affords a parallel to the rapid development of character which took place in America during the five years of the late civil war. At its close the ordinary results of long internal strife were conspicuous only by their absence. No chronic guerilla warfare was sustained in the South, and in the North no unusual license or increase of crime revealed the presence of a million of men unaccustomed to habits of industry and inured to a life of arms. Yet while these superficial indications of change would be sought in vain, other and far more suggestive phases of development cannot but force themselves on the attention of any thoughtful observer. The most noticeable of these is perhaps to be found in a greatly enlarged grasp of enterprise and increased facility of combination. The great operations of war, the handling of large masses of men, the influence of discipline, the lavish expenditure of unprecedented sums of money, the immense financial operations, the possibilities of effective co-operation were lessons not likely to be lost on men quick to receive and to apply all new ideas. Those keen observers who looked for strange and unexpected phenomena when the struggle in the field was over have indeed witnessed that which must have surpassed all anticipation.

If the five years that succeeded the war have been marked
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by no exceptional criminal activity, they have witnessed some of the most remarkable examples of organized lawlessness, under the forms of law, which mankind has yet had an opportunity to study. If individuals have, as a rule, quietly pursued their peaceful vocations, the same cannot be said of certain single men at the head of vast combinations of private wealth. This has been peculiarly the case as regards those controlling the rapidly developed railroad interests. These modern potentates have declared war, negotiated peace, reduced courts, legislatures, and sovereign States to an unqualified obedience to their will, disturbed trade, agitated the currency, imposed taxes, and, boldly setting both law and public opinion at defiance, have freely exercised many other attributes of sovereignty. Neither have the means at disposal proved at all inadequate to the ends in view. Single men have controlled hundreds of miles of railway, thousands of men, tens of millions of revenue, and hundreds of millions of capital. The strength implied in all this they wielded in practical independence of the control both of governments and of individuals; much as petty German despots might have governed their little principalities a century or two ago. Thus by degrees almost the whole of the system of internal communication through the northern half of the United States has practically been partitioned out among a few individuals, and, as proximity, or competition on certain debatable grounds,—the Belguims of the system,—brought the interests represented by these men into conflict, a series of struggles have ensued replete with dramatic episodes. No history of the present time will be complete in which these do not occupy much space, and any condensed record of them has, therefore, much more than a passing value. Not history in itself, it contains the material of history; yet the thread of these episodes is so difficult to trace, lying concealed in such dull volumes of evidence and records of the law, or preserved only in the knowledge of individuals, that unless it be found at once it is in danger of being lost forever. The speedy oblivion which covers up events that, for a time, fasten public attention and seem big with great results, is indeed one of the noticeable indications of the times. The practical experience of this fact has tended greatly to

encourage all sorts of violations both of law and of morals. There seems no longer to be any Nemesis to dog the evil-doer. Men are to-day in all mouths infamous from active participation in some great scandal or fraud, — some stock operation or gambler's conspiracy, some gold combination or Erie Railway war, some Credit Mobilier's contractor's job or Hartford & Erie scandal, — and to-morrow a new outrage, in another quarter, works a sudden condonation of each offence.

Nothing could more fully illustrate the rapidity with which such episodes as those referred to are forgotten than the complete oblivion into which the struggle in 1869 for the possession of the Albany & Susquehanna Railroad has fallen. This contest, marked by legal scandals almost unparalleled, and actually resulting in an attempt at armed warfare between corporations, though not yet finally passed upon by the courts, is fairly forgotten by the world. It was, however, not without elements of a permanent interest, though no consecutive account of it has yet been attempted. The following narrative, drawn almost exclusively from the sworn evidence and official records in the case, probably presents the story with as near an approach to accuracy as is now likely ever to be arrived at.

The business of transportation by rail naturally divides itself into the two great elements of through and local traffic. The Erie Railway was especially constructed with a view to through traffic, and the New York Central, though originally consisting in a chain of disconnected local roads, through the force of circumstances and by a natural process of development, early became one of the great trunk lines of the continent. The Albany & Susquehanna, on the contrary, was designed by its projectors as a purely local road. As such its history could never have been a very interesting one, except to its projectors and owners. It happened, however, to occupy a bit of debatable territory between the two great trunk lines just mentioned, and hence derived its importance. New England has always been in railroad history a sort of an appanage of the Central Railroad of New York. Both freight and passengers passing to and fro between Boston and the West naturally took Albany on their way, and the Central Road, monopolizing as it did the

one natural gap in the mountain ranges which divided the interior basin from the sea, looked upon this traffic as its inalienable property. The Albany & Susquehanna Railroad started from this eastern terminus of the Central, and was intended to open it to the Erie at the city of Binghamton, some one hundred and forty miles from the point of departure. In the early days of the enterprise through traffic was less regarded by railroad managers than it now is, and the future significance of this link in their system was hardly realized by either of the great trunk lines. The carriage of freight was then but little understood, and grades were of far greater importance than they now are. Valley roads, it was supposed, might safely ignore the mountain track. This the Albany & Susquehanna certainly was. The region through which it passes is very broken, though it ranks among the finest of the agricultural districts of New York. Starting from that point where the great Alleghany range gradually sinks away into the valley of the Mohawk, the road skirts the base of the heights of Helderberg, an outlying spur of the Catskills, famous once as the seat of the anti-rent troubles, and then, passing among the large rolling hills of Southeastern New York, it gradually climbs the water-shed. The route was a difficult one, and the road was costly of construction ; laid out on the broad-gauge principle, as a contemplated feeder of the Erie, it was forced to scale ridge after ridge in working its way from one picturesque valley to another, through which to find a natural roadway to its destination. The country along the line is of a hilly rather than a mountainous character, partaking more of the appearance of Vermont than of New Hampshire ; timbered lands and cultivated fields alternate over the loftiest summits, and there is something peculiarly attractive in the primitive nestling appearance of the towns and villages. The road thus was projected through a difficult and sequestered region, neither wealthy nor of varied industries, opening to a new trade neither great markets nor a peculiarly active people. It encountered, therefore, even more than the average amount of those financial tribulations which mark the early history of all railroads.

The company was organized in 1852, and the work of construction was begun in 1853, with one million dollars raised

by individual subscription along the line of the road; further sums in aid of construction were subsequently received from the towns likely to be benefited by the line, which, by an act of special legislation, were authorized to subscribe to its stock; a loan of one million dollars was likewise obtained from the city of Albany, upon a pledge of the first-mortgage bonds of the company. The process of construction was, however, very slow. The work begun in 1853 was suspended in 1854 on account of the failure of the contractors; it was recommenced in 1857, and then slowly dragged along to completion, a very contractors' Golgotha. Eight times did acts extending to it the financial aid of the State pass the legislature; but they were encountered by six executive vetoes, and from this source the company realized but seven hundred and fifty thousand dollars. That the scheme was successfully carried out at all was mainly due to the good pluck and untiring industry of one man, Joseph H. Ramsey, — at once the originator, president, financial agent, legal adviser, and guiding spirit of the enterprise.

The close of the seventeenth year of corporate life found all the available means of the company exhausted, and every one connected with it, except Mr. Ramsey, thoroughly discouraged and despondent, with the twenty-two last and most difficult miles of the work yet unfinished. In this emergency the company once more looked to the State for assistance. Through the management of Mr. Ramsey, who had himself in former times more than once assumed the duties of a State legislator in behalf of the enterprise, the necessary act was passed. Most unexpectedly it encountered a veto, the sixth of the series. With an empty treasury, with heavy payments to contractors and on account of interest already due, and with other similar payments rapidly maturing, — with bankruptcy staring him in the face, and with all sources of supply apparently exhausted, — under all these disheartening aspects of the case Mr. Ramsey did not despair. The company had in its safe two classes of securities and two only on which the further necessary loans could possibly be effected. It had a portion of its own second mortgage bonds and some nine thousand shares of its capital stock, on which various instalments ranging from ten to forty per cent had been paid by the original subscribers. This stock

and the subscriptions upon it had subsequently been declared forfeited by a vote of the board of directors, with the consent of the holders, for the non-payment of the balance of subscriptions. A law of New York prescribed that no railroad should issue its stock for less than its par value. This law, however, the courts had held did not apply to forfeited stock in the treasury of the company. The difficulty in the case was not in putting the stock on the market, but in finding a purchaser for it when it got there ; it had no market price ; as an investment it ranked far from high, and, unlike the Erie, it had at this time no value for "speculative purposes." Under these circumstances it seemed possible to the directors to make this one of their two securities available only as a make-weight, — a *douceur*, it might be said, to the other. Two loans were effected accordingly, under a resolution which received the unanimous approval of the board of directors on the 3d of June, 1868. The first was with Azro Chase, who became the purchaser of fifty thousand dollars of the second-mortgage bonds at seventy per cent of their par value, with the additional right or option of taking at any time three hundred shares of the forfeited stock at twenty dollars per share. This loan was negotiated through one of the directors of the company named Leonard, acting as its financial agent, and amounted to the sale of eighty thousand dollars, in the nominal securities of the company, for the sum of forty-one thousand dollars in cash. Two hundred shares of the stock, as it afterwards appeared, passed into the pockets of the director and financial agent as a species of brokerage commission. The second loan was negotiated by Mr. Ramsey himself with Mr. David Groesbeck, the head of a well-known brokers' firm in the city of New York, and formerly the business associate of Mr. Daniel Drew. This loan was upon terms somewhat more favorable to the company than the other, and there were no indications of brokerage in the case. The company received five hundred and sixty thousand dollars, and pledged as collateral its second-mortgage bonds at seventy per cent, with the privilege of purchasing them at any time within eighteen months at eighty, and a similar privilege as regarded twenty-four hundred shares of the forfeited stock at twenty-five dollars per share. In other

words, if the lenders availed themselves of the option, as they subsequently did, securities to the nominal value of one million and forty thousand dollars were sold to them for seven hundred thousand dollars in cash. This must certainly be considered as a very advantageous bargain for the company ; thirty per cent is a large profit, but it here represented a very unusual risk. Both of these loans received the unanimous sanction of the board of directors, and that to Groesbeck played a most important part in the subsequent struggle for the possession of the road.

With the money thus raised the enterprise was at last carried through, and, on the 15th of January, 1869, seventeen years after the organization of the company, the cities of Binghamton and Albany were brought into direct communication. Meanwhile those seventeen years of construction had greatly altered all the conditions of that railroad system of which the Albany & Susquehanna Railroad was now for the first time to become an integral part. In 1853 both the Erie and the Central were but feebly entering on their great careers. The Erie was just completed to Dunkirk ; the Central was not yet consolidated ; the whole receipts of the first were but one third part of what the completion of Mr. Ramsey's road found them, while, during the same interval, the receipts of the last had swollen from less than six millions per annum to considerably over fifteen. As for the men who managed the great trunk lines when Mr. Ramsey had completed his work, their names had never been mentioned in connection with railroads when he began it. In fact, the whole aspect of the problem had changed. In 1853 all the roads in the country were local roads ; in 1869 no local road was suffered to exist, unless the great through roads were satisfied that it could serve no purpose in their hands ; nay, more, unless they were also satisfied that it could serve no purpose in the hands of their competitors. When, therefore, the projectors of the Albany & Susquehanna line had completed it to Binghamton, they suddenly found themselves involved in all the complications and controversies of an intricate system. The intended local road was an element of strength or a source of danger not to be ignored by the managers of the great trunk lines.

Messrs. Jay Gould and James Fisk, Jr. had at this time already succeeded in firmly establishing themselves in the practical ownership of the Erie Railway. Mr. Daniel Drew, some six months before, had been driven out of its treasurer-ship, and even Commodore Vanderbilt had been compelled by fair means and by foul to abandon all idea of controlling its management. Of the two men now in possession of this great thoroughfare, of their personal character and of the means by which they procured and were prepared to perpetuate their power, it is unnecessary here to speak. Certain things may be assumed as matters of common notoriety. It is safe to say that the individuals just named, and the events in which they have been prominent during the last few years, have earned for them and for certain elements of our age and country a world-wide infamy which will for years render their formal introduction to readers of average information wholly unnecessary. When the Susquehanna Road was completed it became at once a most important element in the successful prosecution of the plans of Messrs. Gould and Fisk. It was so from two points of view, — either as regarded their competition with the Central Road for the carriage of the produce of the West to New England ; or, still more important, as regarded their competition with other agencies for the carriage of coal to the same region. The anthracite coal deposits of America lie but a short distance to the south of the Erie Railway. Disappointed in the hope of successfully competing with the Central Road for the carriage of the produce of the West, convinced at last by hard experience that the more of this business the road undertook to do the more hopelessly bankrupt it became, the Erie managers had more and more turned their attention to the business of transporting coal. In this also they were subject to a very sharp competition, particularly from the wealthy companies which themselves owned the coal-beds, and which now proposed to supplement their business as colliers with that of carriers also. This by no means met the views of the Erie people. They were now entering into vast contracts with various coal companies to haul many hundreds of thousands of tons per annum ; they naturally wished to extend their connection, as by doing so they accomplished two ends,

— they shut the coal companies up in their mines, making them dependent on the Erie Railway for access to their markets, and at the same time they secured to themselves a monopoly in so far as the consumers were concerned ; they, in fact, placed themselves as an indispensable medium between producer and consumer. The Albany & Susquehanna Road might well develop into an independent and competing line ; hence they greatly coveted the possession of it. By it they would not only secure an access to Albany, but would forge the link which was to unite the Erie with a whole network of roads running north and east from Albany throughout coal-consuming New England.

It is wholly unnecessary to dwell upon the public considerations which rendered it unadvisable that the adventurers then representing the Erie Railway should be intrusted with a practical control over the winter supply of such an article as anthracite coal. However amiable or otherwise they might be in their domestic characters, their course had not been such as to make unprejudiced observers anxious to repose in them so delicate a duty as that of sole purveyors at any season of an article of prime necessity. The coal companies naturally did not look with any favor at a policy which threatened their lines of communication. Finally Mr. Ramsey, as the controlling influence in the Albany & Susquehanna management, neither desired to surrender the independence of his road, nor, in view of the recent experience of others, did he impose implicit faith in either the verbal or written assurances or obligations of the Erie representatives. Possession was with them considerably more than nine points of the law, and Mr. Ramsey evinced a marked repugnance to surrender the property intrusted to his charge into their possession, regardless of any liberal promises held out as to subsequent beneficial results, public and private, likely to ensue from his doing so.

The position of Mr. Ramsey in his own board of direction was not, however, perfectly secure. Certain enmities and jealousies had, little by little, not unnaturally grown up along the line of the road, and, at the election of directors in 1868, a ticket had been chosen partly in the opposition interest. What these parties represented when they came into the board

it is difficult to say ; it may have been a restless feeling of discontent at the slow progress of the enterprise, or a vague desire for change ; or, perhaps, a personal dislike and mistrust of Mr. Ramsey. Whatever the cause, the direction at the time of the completion of the road was divided not unevenly. This condition of affairs was very unsatisfactory to Mr. Ramsey. He maintained that at the previous election he and his friends had been taken by surprise ; that no wish for a change in management really existed in the minds of the bulk of the stockholders ; but, finally, whether it existed or not, he let it be distinctly understood that he did not intend to belong to a divided direction, and that at the coming election either he or his opponents were to go out. The materials for a lively contest for the control of the company in September, 1869, thus existed in great abundance and on all sides.

The road was completed in January, and early in June the Erie manipulators began their preparations to obtain possession of it, or, as they more graphically would have said, to "gobble" it. The stock of the road was nominally quoted at about twenty-five per cent of its par value ; it was rarely bought or sold, and was supposed to possess little real value, except as representing the control of the enterprise. It was almost exclusively in the hands of three classes of owners,—the directors and those dwelling along the line of the road, subscribing municipalities, and certain capitalists who held it as security for money advanced and expended in construction. The subscription books of the company had never been closed, as but two million eight hundred thousand dollars of the four million dollars of authorized capital had ever been subscribed, and of the amount of stock which had been subscribed for, eight hundred thousand dollars had been forfeited in the manner already mentioned. Whoever desired to get possession of the property had, therefore, to obtain the control for a longer or shorter period, to include the election day, of a majority of this stock. The Erie party wishing to come in, and the opposition minority determined not to go out, thus had natural affinities to each other. But though when united they controlled a formidable minority of the whole stock, yet it was by no means the majority, and the Ramsey party was now thoroughly alive to the

danger of the situation. The plan for the approaching campaign was soon matured. Under a sudden demand for election purposes the stock, which for years had been nominally quoted at twenty, rose rapidly in July to forty and fifty, and even to sixty and sixty-five per cent. All parties were buying. The issue was, however, to be decided by stock held by municipalities, and it was to the control of this that the greatest efforts were devoted. Here lay the stronghold of the Ramsey party; and here they felt secure, for the law authorized the town commissioners, who held this stock as trustees, to sell it only for cash and at its par value, and forbade them to sell it for less unless specially authorized to do so by a town vote. This was a point which it seemed hardly likely to touch. Suddenly, and to their great dismay, Mr. Ramsey and his friends heard of agents out among the towns offering the commissioners par for the stock, provided the offer was accepted at once. Naturally this was a great temptation to commissioners who represented towns which grievously felt the weight of railroad loans. These men were suddenly called upon to accept or reject, on their own responsibility, an offer which, a few days before, would have seemed incredible, but the acceptance of which, while it would relieve the town of debt, would also deprive it of all voice in the management of the road waited for so long. In a number of cases the commissioners considered it their duty to accept the offer, and the control of several hundred shares was in this way secured. The Ramsey party was thus forced into the field, and the stock of towns rose to a premium. This process, however, involved a very considerable outlay of money and no inconsiderable risk of loss. Buying up a majority of the stock was altogether too much like paying for a road. Why should that be obtained at great cost which could equally well be got for nothing? Stimulated by the passion which Mr. Fisk has happily described as an inherited disposition "to rescue things out of somebody else," one Sunday afternoon, early in August, a party of gentlemen met at the Fifth Avenue Hotel in New York and arranged a new plan, involving the certain transfer of the road into their hands, but avoiding the necessity of further pecuniary outlay. A negotiation was successfully concluded for the purchase of four hun-

dred and fifty thousand dollars of the stock of various towns on the following terms: no money was to pass, but the bonds of Messrs. Gould and Fisk were given, binding them to purchase and pay for the stock after the election, provided the commissioners should at the election vote as the givers of the bond should direct. The legal effect of such an arrangement may well have escaped the town commissioners, but Messrs. Fisk and Gould had not as a rule up to this time been found deficient in matters of technical nicety. These bonds had no binding force whatever. It was not a sale for cash, it was contrary to law and to public policy; it was an arrangement wholly beyond the powers of the commissioners to make, and one which the courts would not sustain. The commissioners who accepted these bonds and who subsequently did vote as those who gave them dictated, were public officials; as such their duties were prescribed and were sufficiently simple; they could sell, and they could vote, but if they sold it was to be for cash down, and if they voted it was to be on their own judgments and not on those of other people. In this case, indeed, what security had they that, after they had voted the road into the hands of the Erie managers, the conditions of the bond in regard to the purchase of the stock would be fulfilled? As a matter of fact they did vote as they agreed, but nothing further was ever done to complete the transfer of the stock.

Events now moved rapidly on both sides. On the 3d of August the certificates of town stock were presented for transfer. It was a new question; Mr. Ramsey was away, and the treasurer hesitated. Finally, all stock sold for cash and paid for by either side was transferred; but the transfer was denied where, in the opinion of the treasurer, the transaction was not completed. It was evident they were pressing the Ramsey party heavily. It now occurred to Ramsey that the subscription-books had never been closed, and that twelve thousand shares of the capital stock of the company were as yet unissued. On the 5th he took the subscription-book home with him, held a meeting of a few of his friends, and, among them, they wrote down their names for nine thousand five hundred shares of stock. It was fully understood that this subscription bound those who made it to no immediate payments; ten per

cent was to be paid in at once, and for this Ramsey was to provide; the remainder would only be called in as should be ordered by the board of directors whom this very stock would elect. Meanwhile, if any of the subscribers desired to get rid of their stock, Ramsey undertook to relieve them of it. That this subscription, made by directors in secret on the eve of an election, and with a view of affecting that election, should have subsequently been held legal is open to criticism; its good faith even might well have been suspected; but that, on grave consideration, it should be justifiable is perhaps as severe a censure as could be passed on the condition of affairs existing in the community in which it was made. Yet, under the circumstances, unnecessary and unfortunate as the step afterwards proved to have been, Mr. Ramsey and his friends were justified in taking it. It is simply necessary to refer to those who now sought to obtain control of the Albany & Susquehanna Railroad. Their position in the community, their standing in the courts, their financial and fiduciary relations, were notorious. They had reduced society to a condition in which any man brought into conflict with them could not but realize that he had only himself to rely on, that a species of Lynch law prevailed, and that might and possession alone counted for anything. The first duty of Mr. Ramsey then, unquestionably, was to keep the property intrusted to his charge out of the hands of those men; this every consideration of honor and of responsibility bound him to do at any cost and by all legal means, certain that, whatever he might scruple at, his opponents, once in control, would scruple at nothing. This step was legal, and, however questionable in many aspects, Mr. Ramsey and his friends were justified in taking it, provided they made their subscriptions in good faith to their company, and held themselves responsible for them. At best, however, it was an error in judgment. By it Mr. Ramsey sacrificed much of the strength of his position, which lay in the fact that he was fighting men who had set the most infamous precedents ever known for transactions of a not dissimilar character. As usual in dealing in measures of questionable right and expediency, one doubtful step soon led to another which admitted of no doubt.

Ten per cent on the amount of the subscriptions had at once to be provided, and that, too, by Ramsey, whose resources were already strained to the utmost. Again he had recourse to Groesbeck, and drew on him for \$100,000; he had also subscribed for more stock in Groesbeck's name. The subscription, involving as it did further possible calls to the full value of the stock, Groesbeck politely declined; the draft he honored, receiving as collateral for it a deposit of \$150,000 of the equipment bonds of the Albany & Susquehanna Railroad Co., which belonged to the road, and which Mr. Ramsey procured from the treasurer for the purpose of so pledging them. The ten per cent of the subscription was thus paid in, and the nine thousand five hundred shares were placed on the books of the company to the credit of the nominal subscribers, each of whom gave him a voting proxy for the coming election. Months afterwards Mr. Groesbeck defended this transaction, and declared that, under the same circumstances and fighting the same men, he himself would have gone as far, and further too, if necessary. The proceeding was, however, none the less indefensible. The securities which had thus been misapplied were shortly after, at Groesbeck's own suggestion, returned to the officials of the company, and their place supplied by securities of inferior value; and as for the stock, it was never voted on, and the issue of it only served to endanger the case of the Ramsey party.

This took place on the 5th of August, but already the usual storm of judicial orders and injunctions had begun. The stock of the towns being, so far as possible, secured, the next blow was directed at the stock reissued and held as collateral. Two blocks of this were outstanding, — one in the hands of Chase, the other in those of Groesbeck. On the application of Messrs. Gould and Fisk's counsel, an injunction was issued by Mr. Justice Barnard, of the Supreme Court, forbidding any votes being cast upon this stock, and ordering its transfer to a receiver pending judicial investigation; all this upon the ground that the stock was unlawfully issued. The books were to close upon the 7th, the order was procured on the 4th. While this was going on in the city, the Ramsey party was not idle in the country. On the same day they appeared before Judge Parker

of Owego and commenced a suit, resulting, of course, in the inevitable injunction, by which all parties were restrained and enjoined from transferring on the books of the company seven hundred shares of stock belonging to the town of Oneonta, and which the Erie party claimed to have purchased. No sooner did the news of this move arrive in New York, than Mr. Thomas G. Shearman, a member of the firm of Field, Shearman & Co., and one of the most trusted legal advisers of those now controlling the Erie Railway, was despatched to Owego, where he succeeded in getting the injunction dissolved. Hitherto the engagement had been at long range as it were, but it now lacked a few days only of the date when transfers previous to the election were to cease; it was time for close quarters. Not content with the success of his defensive operations, the Erie counsellor at once assumed a vigorous offensive. Two new suits were initiated, — one to compel the immediate transfer of that very Oneonta stock which the company had just previously sought to prevent; and the other, a more vital thrust still, sought to restrain Ramsey himself from the further performance of his duties as president of the company. It is almost unnecessary to say that both the desired orders were almost immediately obtained. The board of direction was divided into two hostile camps exactly equal in strength, — they stood seven to seven. The suspension of Mr. Ramsey thus turned the scale and placed the Erie opposition in the majority. It remained only to call a meeting of the directors, over which the vice-president, whose sympathy with the Erie movement was pronounced, would preside, and this meeting would vote out of office the present treasurer, who hesitated about the desired transfers, and would replace him by a suitable successor. Absolute control of the books thus secured, the election might be regarded as a mere matter of detail. All the day of that meeting the offices of the company swarmed with indignant directors and opposing counsel; angry words passed, loud threats were uttered; the suspended president was informed that his presence was undesired, and the unsuspended vice-president showed a strong disposition to assume also the duties of treasurer in so far as these involved the entering of transfers and the issuing of certificates of stock.

At last a sort of tussle took place over the books, and then the police were called in, who established an angry truce. All this took place on the 5th; on the 7th the books were to be closed.

The control of those books it was well understood implied the control of the road. The presence of James Fisk, Jr., and of Jay Gould in the struggle was no mystery, and the officers of the road could not fail to recall how, only a few months before, the vault of the Union Pacific Railroad had been forced, in a vain search for the books of the company, under cover of a judicial process and at the dictation of these very men. That the records were not in safety while in the offices of the corporation was notorious. That night, in the presence of counsel, and with the knowledge of the treasurer, they were removed from the building. The law guaranteed to stockholders access to the books of the corporation; the judicial abuse of the processes of law had converted this right into a facility for fraud. Whether those who would now insist upon the right were likely to avail themselves of that opportunity was a question in regard to which recent experience in other quarters might warrant the formation of an opinion. In any case the books were now surreptitiously removed under the advice of counsel, and the action of the officials who assented to this removal was indorsed by public opinion, and, throughout the subsequent proceedings, was not censured by the courts.

The next day the opposition wing of the direction met and organized with the vice-president in the chair. Just as they were proceeding to business, however, an attorney of the other wing quietly entered the room and served upon four of those present a new judicial order, restraining them from acting as directors of the company, or from interfering with its affairs. This unexpected move, leaving them without a quorum, fell like a thunderbolt on the Albany members of the Erie party, and they precipitately retired from the field and took the first train to New York in search of counsel and assistance.

Reaching the Grand Opera House and the offices of the Erie counsel, the fugitives laid their position before Mr. Shearman. The quick eye of that gentleman at once took in the whole situation, and he was not unequal to the emergency. The president,

vice-president, and a majority of the board of direction were now suspended, and the Albany & Susquehanna Railroad was suspended with them ; every one was enjoined ; there was no one authorized to give an order or to pay out a dollar ; chaos was come again. Recognizing the fact that a court of equity had done this mischief through the exercise of one of its powers, Mr. Shearman was inspired with a conviction that the same court must repair it by the exercise of another power, — injunctions had occasioned the dead-lock, a receivership must dissolve it. A new suit was at once commenced, the complaint in which set forth the existing condition of affairs, and prayed for the appointment of receivers who should operate the road, and so avert the disastrous consequences otherwise sure to ensue. This paper was drawn up by Mr. Shearman at his office in the Twenty-third Street Opera House, on the afternoon of Friday the 6th of August. It was not ready for signature until the hour of 10 o'clock, p. m. The Grand Opera House is not in the immediate vicinity of any court of law, nor do judges generally frequent their court-rooms at late hours on August evenings. The private residence of Mr. Justice Barnard was on Twenty-first Street, at least half a mile away, and on the morning of this day the Justice himself was at the bedside of a dying relative in the country. Telegraphs from Mr. Fisk had, however, reached him there, and now, by rare good fortune, he happened to be in the immediate vicinity of the Opera House at this very time, and the surprisingly brief period of fifteen minutes thus sufficed to go through all the forms and make all the inquiries necessary to satisfy the judicial mind in regard to so trifling a matter as the receivership of some one hundred and fifty miles of railroad, involving millions of capital. His signature was at once secured to an order appointing Charles Courter, of whom he probably knew absolutely nothing, and James Fisk, Jr., of whom he undoubtedly knew a great deal, receivers of the Albany & Susquehanna Railroad Co. It is wholly unnecessary to criticise this order. It reflects the highest credit on the energy of all concerned : it speaks volumes. The law's delay is an ill of which the citizens of New York, certainly, have no cause to complain, at all times and under all circumstances.

By half after ten o'clock all was settled, and at eleven the

two receivers, accompanied by a select body-guard of directors, friends, and lawyers, were on their way by the night train to take possession of their charge. Their opponents had, however, already got an inkling of the summary process impending over them from New York, and, while Mr. Shearman was busy with the preparation of his order in the Grand Opera House, other counsel were no less busy in the opposing camp at Albany preparing a counter-order, appointing another receiver in their own interest. This, when completed, was duly submitted to Mr. Justice Peckham, of the Supreme Court of the Albany district, between nine and ten o'clock of the same (Friday) evening. The signature of this magistrate was affixed to it, and a Mr. Pruyn of Albany was by him appointed receiver of the Albany & Susquehanna Railroad Co. It was close work. Each order took effect when signed, and there certainly was no delay in their preparation, and even less in procuring signatures to them. The evidence seemed subsequently to indicate that the Albany receivership had about one hour's priority in time; it had, however, one hundred and fifty miles of distance in its favor, and the great weight which attaches to possession as an element of success in litigation has long since passed into a proverb.

Thus, on Saturday, the 7th of August, everything indicated a collision of forces. No sooner had Receiver Fisk reached Albany, and received the reports of his scouts, than he hastened with his friends to the offices of the company. He arrived there towards eight o'clock. In spite of this praiseworthy activity on their part, Messrs. Fisk and Courter, on proceeding to take possession of the premises, encountered a somewhat unexpected obstacle in the person of a Mr. Van Valkenburg, the superintendent of the road, who, upon being informed of their errand, announced that he was already in possession under the orders of Receiver Pruyn, and further intimated that he did not propose to abandon it. A very amusing and somewhat exciting scene then ensued. The junior appointee of Mr. Justice Barnard presented his papers to the superintendent, seated himself on the table, announced himself as Mr. James Fisk, Jr., of New York, come to take possession and prepared to do so if it required "millions of money and an unlimited number of

men." He further added that this was his twenty-sixth raid of the same character, and that he proposed "to take you fellows"; to all of which Mr. Van Valkenburg pleasantly replied that he "hoped he would have a good time doing it." His companions Mr. Fisk introduced as his "boys," and invited them in to possess themselves. Quite a lively colloquy ensued, which was not satisfactory to Mr. Fisk, who from words gradually proceeded to overt acts, and finally ordered his "boys" to put the other "boys" out. Unfortunately the preponderance of force was not on his side. Instead of ejecting his opponents, he was summarily ejected himself, and, after being ignominiously and very roughly hustled down stairs, he found himself in the street in a very dishevelled condition. Nor did his discomfiture stop here; no sooner did he reach the pavement than he was arrested by a fiery little individual, claiming to be a policeman, and ignominiously marched off to the station-house. As no complaint was preferred he was speedily released, but probably not until he had discovered that his arrest, like his ejection, was the work, not of a policeman, but of an employee of the company. No sooner was he again a free man than he returned to the charge. Mr. Pruyn was now at the offices in person, claiming to be in possession as receiver, and a crowd of lawyers, officers, and parties in interest had assembled. The heads of the opposing factions met face to face. No further riotous demonstrations were attempted, but, pending advices from New York, Mr. Fisk kept up the semblance of a possession. He evidently bore no ill-will to Mr. Van Valkenburg, on account of the rough treatment of the morning, as he even went so far as to compliment that gentleman on his display of energy, and to signify a desire to extend to him his personal favor. As to Mr. Ramsey, Mr. Fisk, as a happy solution of existing complications, suggested that the possession of the road should be decided, not as of old by a personal contest between the heads of the opposing factions, but by the goddess of chance, or whatever other divinity may preside over the issue of a game of "seven up"; and, with such interchange of amenities and pleasant sallies of wit, with now and again the service of some notice or order of court, and perhaps an injunction or two, the *protégé* of Barnard beguiled the weary monotony of the day.

The cessation of active hostilities did not last long. The discomfiture of the morning had been at once telegraphed to Mr. Shearman, in the recesses of the Grand Opera House, and that gentleman had forthwith proceeded to discover and apply the suitable remedies of the law. Recourse was at once had to Judge Barnard, and a most unusual and indeed wellnigh antiquated writ was exhumed to meet the emergency. In the first place a new and sweeping injunction was applied for, and, of course, immediately granted, by virtue of which Mr. Receiver Pruyn, the sheriff of the county, the Albany police, and all the railroad employees, were restrained from any interference with Receivers Courter and Fisk. Not satisfied with this, a writ of assistance* was likewise ordered to issue, by which the sheriff, and, if need be, the *posse comitatus*, was placed at the disposal of Messrs. Fisk and Courter. This was a sufficiently unusual proceeding, but the service of the process was so extraordinary that the ordering it was at once reduced to the commonplace. Now, probably for the first time on record, both injunction and writ were forwarded to their destination for service by electric telegraph. That afternoon officers in Albany actually undertook to serve upon parties to a suit processes which had been issued in New York not an hour before, on the strength of affidavits as to facts which had that day occurred in Albany. In place of making service with the original, bearing the seal of the court and the signature of the judge, the very ink of the copies which the officers had in their hands was not yet dry. Of course such a service was contemptuously disregarded, nor did the sheriff presume to insist upon it.

It was now afternoon and it was very evident that nothing further could be effected this day; both parties, however, claimed to be in possession, and neither would yield the ground. Finally a species of truce was arranged to hold good over the coming Sunday. A representative of each party was to be left in the offices, and, before nine o'clock of the

* "Writs to the sheriff, to assist a receiver, sequestrator, or other party to a suit in chancery, to get possession, under a decree of the court, of lands withheld from him by another party to the suit. These writs, which issue from the equity side of the Court of Exchequer, or from any other court of chancery, are at least as old as the reign of James I., and are still in common use in England, Ireland, and some of the United States." — *Quincy's (Mass.) Reports*, p. 396.

coming Monday, no act of hostility, open or covert, in so far as possession was concerned, was to be attempted by either side.

The interval of Sunday was passed in active preparation. While the representatives of the receivers tarried in the deserted offices, the principals themselves were busy with their plans of campaign. Mr. Fisk and his friends among the directors retired to New York to get advice and the originals of the telegraphed writs; Mr. Pruyn and the Ramsey party stoutly prepared themselves in Albany for such trials as the morrow might bring forth. The issue now presented was, in plain language, one simply of judicial nerve. It was a conflict between the judiciary of New York City and that of the country. The system of electing judges by the popular vote had at last brought forth bitter fruit, and men had been elevated to the bench who should have ornamented the dock. These selections did not perhaps extend beyond one or two districts out of the eight into which the State was divided, but each of the thirty-three judges who composed those eight courts exercised throughout the State the extensive and delicate powers of a chancellor. All were magistrates of co-ordinate powers, and technically of one court; an order made by one could be dissolved by another, an officer appointed by this magistrate could be suspended in the exercise of his duties by that, what one justice could do the next could undo. Everything under such a system depended on judicial respect for judicial action; courtesy and confidence were the essence of it. All these had, in certain quarters, now long passed away. The judges of the country had felt bitterly the discredit brought upon the common bench by the action of more than one judge in the city; there were among them those who had been deeply mortified by a contemptuous disregard of their process. Hence a conflict had become inevitable, and nowhere was it so likely to arise as out of the litigations originating with the managers of the Erie Railway. A peculiar discredit had now long attached to these, and certain names, both on the bench and at the bar, were always associated with them. There are facts which are of public notoriety; the community recognizes them and no justice can ignore them. When, therefore,

James Fisk, Jr., was appointed, as a matter of course, by Judge Barnard, receiver of a railway, no part of which lay within a hundred miles of that magistrate's judicial district, and when this appointment was made on the eve of a contested election for directors of that railway, and must have been decisive of the contest, then, at last, a case was presented which could not be ignored. The conflict was not likely to be a pleasant one. Recent proceedings in other causes had indicated with sufficient clearness the lengths to which certain justices of the first district were not indisposed to go. Neither the scandal certainly involved, nor the defeat not unlikely to ensue, were pleasant to contemplate; but the stand must be made. Circumstances had already designated Judge Peckham of Albany as the magistrate to whom the Ramsey people must almost necessarily have recourse. The public estimation in which this gentleman is held was shown by his election, shortly after the events here narrated took place, as one of the new Court of Appeals organized under the judiciary clause of the rejected Constitution of 1869. The scandal which arose out of the Albany & Susquehanna case most materially contributed to the adoption of this single clause. It is probable, therefore, that the action of Judge Peckham on this occasion had a direct influence on his own future elevation; it certainly received the public indorsement.

Receiver Fisk might confidently be expected back, well armed with injunctions and with the original of his writ of assistance on Monday morning. It was necessary that Receiver Pruyn should be prepared to meet him. The last New York suit had enjoined the Albany receiver from any interference with the New York receivers, and had been accompanied by a writ of assistance. This was now met in the usual way. A new Albany suit enjoined the New York receiver from any interference with Mr. Pruyn, and at the same time an order was issued by Judge Peckham restraining the sheriffs from taking any action under the writs of assistance. It was further sought to punish Mr. Fisk for a contempt of court in interfering with its receiver on the previous Saturday, but this the judge held it necessary to send to a referee to take evidence and report. A temporary injunction was granted, and

Mr. Fisk was ordered to appear and show cause on the 13th why this should not be made permanent. Such were the legal complications encountered by Mr. Fisk on his return to the scene of his labors early on Monday morning. He had left New York on the boat the evening before, in company with fifteen friends and advisers, and was fully prepared for vigorous operations. The condition of affairs did not look propitious. He was distinctly checkmated at Albany, and the order checkmating him and forbidding the sheriffs to interfere to put him in possession, was already on the express-train which had left Albany at eight, A. M., and would be due in Binghamton, at the other end of the coveted road, at three o'clock that afternoon. A party to a conflict, however, who operates by steam, is at a manifest disadvantage when acting against one who despatches writs by telegraph. In the present case Mr. Fisk, baffled at one end of the line, went vigorously to work a hundred and forty miles away at the other end of it. While the express-train was toiling along to Binghamton, enjoining as it went all sheriffs and others from paying any attention to his writs of assistance, the telegraph was flashing those writs direct to Binghamton, and commanding that immediate possession should be given to his representatives. Accordingly just before two o'clock, and as the afternoon train for Albany was on the point of leaving Binghamton, the sheriff of Broome County made his appearance, and, by virtue of a writ of Judge Barnard's, fresh from the telegraph wires, proceeded to take possession of all the property of the Albany & Susquehanna Railroad Co., including the train then standing at the station. Three locomotives belonging to the same company were also at Binghamton. These he undertook to seize next; of two of them he obtained possession, but the agent of the road was before him with the third; for, just as he was approaching his prey, writ in hand and borne upon one locomotive, the ingenious employee suddenly switched him off, and, while his own path suddenly led into space, he saw his prize gently slide down the grade out of his reach, and there get up the steam necessary to make good its escape.

The Barnard receivers were thus fairly installed in possession of the Binghamton end of the road, of the point where

it connected with the Erie. An assistant superintendent of the Erie Railway was at once appointed superintendent of the Albany & Susquehanna, and a conductor of the same road was ordered to take out the regular train to Albany, which was still standing at the platform where it was seized. Matters were evidently approaching a crisis. Different sets of receivers were operating the two ends of the road, and two sheriffs, bearing conflicting processes, were rapidly approaching each other on trains drawn by the locomotives and directed by the officers of the hostile factions. This condition of affairs was telegraphed to the Ramsey train at Harpersville, twenty-five miles from Binghamton, and, after some consideration, it was determined to proceed no farther. Meanwhile the news of the Binghamton proceedings caused Superintendent Van Valkenburg to decide on vigorous measures. In the first place he proceeded to clear the offices of all hostile influences. Mr. Fisk had not that day been allowed within the premises. Repeatedly, in company with the sheriff and others, had he presented himself and energetically demanded admission. It was of no avail. It was different with Mr. Courter, his fellow-receiver; he had been treated with a degree of courtesy, and indeed had been permitted to sustain the character of a nominal receiver within the offices. This gentleman was, however, now notified by Mr. Van Valkenburg that the farce of a double possession was to terminate then and there. On Saturday, in the little unpleasantness with Mr. Fisk, Van Valkenburg had given some indications that he was a man of few words and decided action. The hint had not been thrown away. Mr. Courter, after a formal resistance just sufficient to establish the fact of forcible ejection, withdrew from the premises, and the Barnard receivers abandoned every pretence of actual possession of the Albany end of the line. Van Valkenburg's next move was to telegraph an order over the road, stopping every train where it then was; all movement was thus brought to a stand. An extra train, carrying a hundred and fifty men from the workshops, under command of the master mechanic, was then sent up the road to be ready for any emergency. Having thus cleared everything away for action, the next move of the other side was in order.

The representatives of this other side were meanwhile ad-

vancing from the opposite direction ; upon the train were the sheriff of Broome County, the Erie superintendent of the road, and some twenty men. As they moved along, the orders of Judge Barnard were served at each way station, the old officials of the road were displaced, and Erie men were substituted for them. So eager indeed was the sheriff in the discharge of his duties, under the electro-writ of assistance, that he not only served an order, the illegal character of which he must have more than suspected, throughout his own county, but he continued to do so throughout the adjacent county, and, indeed, seemed not indisposed to extend his bailiwick to Albany. At Afton, about thirty miles from Binghamton, a despatch was received from Mr. Van Valkenburg, notifying the party that any farther advance would be at its own peril. The Albany people were then lying at Bainbridge, six miles farther down the track. After some hesitation, which involved a great deal of rapid telegraphing and no inconsiderable delay, positive orders for an advance came to the Erie party, followed shortly after by reinforcements. It was now deep in the night, but the train at last was started and moved slowly and cautiously towards Bainbridge. The Albany party was prepared to receive it. They lay on a siding, with a patent frog — a little machine made to slide trains on to the rails, but equally calculated to slide them off — attached at a convenient point to the main track. In total ignorance of this bit of strategy, the Erie people felt their way along, when, just as Bainbridge, to their very great relief, seemed safely reached, their locomotive gently and suddenly glided off the track, and their train was brought to a stand-still. The instant this took place the Albany train moved up the siding, passed triumphantly by its disabled opponents and on to the main track below them, where it took its position in their rear, effectually cutting off all retreat. As the Erie party tumbled out of their train, they were met by Mr. Smith, one of the counsel of their opponents, who glanced at the process under which they were acting, and at once pronounced it worthless. There was no alternative ; they had fallen into a trap, unconditional surrender was all that remained. This was accordingly submitted to, and Sheriff Browne of Broome County, and all his *posse comitatus*, were

helped off their train and duly served with the order of Judge Peckham, restraining them from doing or attempting anything in aid of the receivers appointed by Judge Barnard.

Having disposed of this little party by capture, and it being now broad day, the Ramsey commander decided vigorously to follow up his advantage, steaming up the road towards Binghamton. On the way he displaced the recently appointed Fisk men, and replaced the ejected Ramsey men in charge of the various stations. Everything proceeded well until the train approached the long tunnel, near Binghamton. This was the battle-ground chosen by the Erie party. Here, close to their base of operations and near their supplies, they had massed their reserves, after the total and ignominious capture of their advance guard.

The tunnel is some twenty-two hundred feet in length, and is about fifteen miles from Binghamton. It marks the last summit the road crosses in going west, and, on either side, is approached by a heavy ascending grade and round a sharp curve. The Albany party arrived at this point at about ten o'clock, and here halted. On the other side of the hill trains were bringing up workmen from the Erie shops, under the officers of the Erie Road, until Mr. Fisk's threat in regard to "any number of men" seemed tolerably certain to be verified. It was a motley collection, the control of which must have considerably puzzled the general superintendent of the Erie Railway, who found himself in command. A more unwieldy body could not well have been got together. The men were wholly unarmed, except, perhaps, with sticks, which one party was detailed to cut in the neighboring woods; they had been hastily summoned from the shops, and were ignorant as children of the crazy errand they were about, nor had they the slightest enmity towards those opposite to whom they stood in ludicrous array. This, however, was not the case with the Susquehanna people. They were now thoroughly stirred up and ready for anything. Most of them had for years been in the employ of the road, and many were personally attached to Mr. Ramsey; they regarded the effort to dispossess him as aimed also at themselves. They were, too, flushed with the success at Bainbridge, and possessed with a strong *esprit de corps*. Such be-

ing the opposing elements, they lay waiting for peremptory orders, which in any case had to come from Albany, for there both Fisk and Van Valkenburg kept their head-quarters. From time to time reinforcements came up, until by seven o'clock the Erie party was raised to an unwieldy mob of some eight hundred men, while their opponents numbered hardly less than four hundred and fifty. The Erie people now decided to try an advance, and accordingly a train well loaded with combatants was set in motion. It moved slowly through the tunnel and emerged safely from the eastern end, merely having to replace a single rail. This done, the advance was continued. Meanwhile the Albany people were fully notified of the impending danger. Accordingly, when the Erie people had replaced the rail and started they started too, and thus the first intimation the raiders had of danger was the discovery, on rounding the sharp curve, of an approaching locomotive, angrily puffing up the grade, and apparently bent on mischief. This was more than they were prepared for. Their whistle at once signalled danger, which the Albany locomotive replied to by signalling to them to get out of the way. In vain the Erie conductor jumped off his train and gesticulated like a madman; in vain the Erie engineer tried to back out of the way; the curve was here so sharp and the incline up which it was necessary to back in order to return into the tunnel was so great, that it was instantly evident, not only that the Albany people wanted a collision, but that their wish was to be gratified. Though the Erie engine could not reverse, it had stopped, and the heavy grade kept down the speed of the Albany train, so that the collision rather indicated an *animus* than inflicted an injury; nevertheless, in a moment the two locomotives came together with a sharp shock. The damage done was not great; guards and cow-catchers were swept away, head-lights were broken, and the attacking engine was roughly thrown from the track; but the collision of engines was the signal for a collision of men. Before the trains had met they were emptied of their loads. Such a system of opposition was something on which the Erie people had not counted, and when, simultaneously with the collision, the Albany men rushed upon them with loud shouts, they were at once completely demoralized,

and broke into a precipitate flight. Their locomotive, with broken lights and a pistol-bullet through its cab, vigorously reversed, until it had reversed itself out of the *melée* and back into the tunnel, while they themselves took to their heels and scampered back towards Binghamton. A few remained on board the train, a few stumbled back through the darkness of the tunnel, but the greater part, to whom their terror perhaps lent wings, scaled the mountain like a sand-hill in their flight.

Victory had again rested on the Albany banners; the Ramsey star was in the decided ascendent. While one party of the Albany men followed up the disorganized enemy, others busied themselves in getting the locomotive on the track. This was soon done, and then they, in their turn, locomotive and all, advanced through the tunnel to complete the rout of Erie. The last-named party had, however, rallied a little in the breathing-time afforded them, and were now at least equal to the task of making a very considerable noise. This, it is true, was not much, but in the growing darkness it was enough. In fact it might be said that one party was afraid to go forward, and the other did not dare to attack. The element of the ludicrous was becoming very pronounced, notwithstanding the earnestness of the combatants. Thus, as the shades of night deepened, they stood apart and defied each other with loud shouts and excessive profanity. A few conflicts of the more daring, a few scattering pistol-shots, a few wounds, none of them serious, told the whole story. Yet it was a riot and a shockingly lawless one; nay, more, it was an alarming one. It was not a sudden fight between ignorant and angry mobs: it was the attempt of two great corporations to levy war on each other with organized force. How far it might have gone cannot be said, for, in the midst of the tumult, the drums of the Forty-fourth Regiment of State Militia were heard approaching, and at this not unwelcome sound the combatants desisted. The Erie people held possession of the field. The Albany party sullenly withdrew, locomotive and all, through the tunnel, which they blocked up with a freight-car, and then, after breaking down a trestle-work or two, with a view of preventing another attack, they retired to Harpersville, where they established themselves for the night.

Meanwhile the whole State was in an uproar over the scandal of these lawless acts. All along the line of the road, and indeed almost everywhere, the feeling was strongly in sympathy with Mr. Ramsey. It could not well be otherwise; without knowing anything of the circumstances of the particular case, a strong presumption was now inevitable wherever the Erie management made its appearance in any complication. At Albany the public sentiment was peculiarly strong; meetings were held, a perfect ovation greeted the arrival of the runaway locomotive from Binghamton and the captured Erie train; crowds collected round the station, and were addressed from the cars by city demagogues on their way "to the front." At last, also, the point was reached at which, if the authorities did not interfere, the people would organize and take matters into their own hands. The militia had already been called upon by the civil authorities of Broome County and had responded to the call, and now Governor Hoffman was recalled from his summer sojourning-place by telegraph, and reached Albany at almost the very time that the Forty-fourth Regiment arrived at the scene of riot. He at once took decisive measures. Orders were telegraphed to the sheriffs along the line of the road directing them, in all cases of doubt, to treat any party in actual possession under a judicial order as being in rightful possession. The military were to be called upon only in case of extreme emergency, but, if the disorders continued, the whole district was to be placed under martial law.

In spite of these new developments, the Erie party was neither discouraged nor idle. The papers of Tuesday contained a long letter from Mr. James Fisk, Jr., setting forth at great length the magnitude of the public interests for which he claimed to be contending. The literary shortcomings of this production were excused on the ground of "quick, sharp work on a stamping ground new to me." Not content with this bid for moral support, on the evening of Tuesday, when the offices of the company would naturally have been deserted, Fisk and Courter made another effort to obtain possession of them. Armed with an order of Judge Barnard's, staying all proceedings under Judge Peckham's writ of Monday, and further fortified with an additional writ of assistance, the brother

receivers made their appearance in a carriage accompanied by the sheriff. Van Valkenburg was, however, on the ground, and, for a moment or two, things had an unpleasant look ; so unpleasant indeed that Mr. Fisk now changed his tactics. Instead of bullying he attempted bribing ; all the braggart confidence of Saturday was gone, and his demeanor was chiefly marked by an excessive care for his personal safety. As for the sheriff, the indications of violence were sufficiently pronounced to induce him to think it inexpedient to proceed further. Probably they would have gone away empty-handed, had not a new judicial power just then stepped into the arena. This was Mr. Justice Clute, of the Albany County Court, who issued his order directing the arrest of the Barnard receivers for conspiring to take possession of the Albany & Susquehanna Railroad by force of arms. In obedience to this order the two indignant receivers were at once taken to Judge Clute's office, whence they were not released until they gave bail for their appearance next morning. The *coup de main* was a failure ; but Mr. Fisk relieved his feelings by graphically describing the attempts which had been made to assassinate him.

The next morning Judge Peckham began the day, not exactly by setting aside his brother Barnard's recent orders, but more courteously by fixing a day on which cause should be shown why they should not be vacated, and, meanwhile, granting a temporary stay of all proceedings under them. The judicial equilibrium was thus restored. At last Governor Hoffman put a final stop to the judicial farce by notifying the sheriff of Albany that he was included in the directions of the previous day. The Ramsey party, being in actual possession at Albany under a judicial order, forthwith applied to the police for protection, which was immediately granted them. Meanwhile, Governor Hoffman received information of the tunnel conflict. He at once notified the counsel that such proceedings must stop, and that some agreement must be arrived at. In due time the counsel notified the Governor, in reply, that they were utterly unable to agree on anything. His Excellency thereupon very emphatically and very properly replied that he neither knew nor cared anything for their com-

plications, but he did propose to preserve the public peace. If those interested could not agree on some other course, it only remained for him to declare the whole district in a state of insurrection, and to operate the road as a military one. This declaration produced a document, signed by all the receivers, requesting his Excellency, as a species of nondescript superintendent, mutually agreed upon, to take possession of and operate the road. This very anomalous trust was accepted by Governor Hoffman, who issued a *quasi* military order, detailing Inspector-General McQuade as his deputy superintendent, and directing him to take possession. This was certainly a fitting climax to all that had gone before. A receiver is an officer of the court. His possession is the possession of the court. The courts in this case were fighting over the control of a railroad, and were forced to ask the Executive to hold the bone of contention while the judiciary "had it out" amongst themselves. Thus the Executive, in the utter break-down of the law, had to accept a trust which did not belong to it, and proceed to perform duties which it had no right to perform, under an authority conferred by certain persons who had no such authority to confer. And all this because a man was selected in caucus and elected at the polls a judge in the first judicial district of New York, who fairly represented the moral and intellectual level of the majority of the voters who had elevated him into infamy. It was no accident; there was no element of chance in the case; it was the working of a system which produced a logical and natural result.

Though the possession of the road was thus disposed of, certain little outstanding accounts remained to be adjusted. The vacating of Judge Peckham's orders by Judge Barnard, and the staying of proceedings under Judge Barnard's orders by Judge Peckham, were matters of too common occurrence to call for notice. The interference of Judge Clute, however, a mere county judge, was something "most tolerable and not to be endured." Accordingly, on the morning of the 11th, after obtaining from Judge Barnard the usual order setting aside Judge Peckham's action of the day before, Mr. David Dudley Field, of counsel for the Erie Railway, read to the court the return of the sheriff, setting forth the resistance he had

encountered on the previous afternoon in his attempt on the Susquehanna offices. Upon his motion the court ordered a peremptory writ, not bailable, to issue, commanding the sheriff to arrest Messrs. Pruyn, Ramsey, and Van Valkenburg, and to produce their bodies in court without delay. Under this process these gentlemen were arrested that afternoon, while in the Executive Chamber, and were held in duress awaiting conveyance to New York. Of course they none of them, at this time, seriously contemplated any such journey. Recourse was again had to Judge Clute, and the non-bailable prisoners were carried before that magistrate on a *habeas corpus*. The subject was taken under consideration by him until next morning. The opponents of Mr. Fisk had shown themselves not inapt scholars, and it naturally occurred to them that processes for contempt might be made to apply to him as well as to themselves. The same thought suggested itself to Mr. Fisk, as soon as he found time to relax from the efforts incident to "quick, sharp work on a stamping ground new to him." He had once before fled to Jersey City, pursued by Barnard; he now incontinently retired to New York, terrified by Peckham. In fact, he abandoned his new "stamping ground" with great precipitation. Flying on board his own steamer, which was lying in the stream ready to serve either as an ark of refuge or a stronghold for prisoners, he was conveyed at once to New York, where he secured himself in the recesses of Castle Erie.

The next morning Judge Clute incontinently discharged the prisoners held under Judge Barnard's writ. It is almost unnecessary to say that his action was apparently in disregard of law; these proceedings throughout were open to this criticism. It was perfectly proper for Judge Clute to issue his writ of *habeas corpus*; when it came, however, to releasing prisoners held by a sheriff on a writ issued for contempt from a court superior to his own, the action of his Honor was, perhaps, more spirited than correct in practice. The prisoners, however, were released, and it only remained for the sheriff to make a return of the facts by mail to Judge Barnard. The matter was then brought once more before that magistrate, this time by Mr. Shearman. The colloquy that then took place was characteristic and well calculated to fill with terror the

hearts of Peckham and Clute, no less than of Pruyn and Ramsey. The counsel began with a comparison. Judge Peckham, it appeared, had signed certain of his orders at his office ; Judge Barnard, it will be remembered, had signed his in the immediate neighborhood of a theatre. Bearing these facts in mind, one cannot but appreciate the delicate sense of honor implied in the following opening remark of the counsel : " Unlike our opponents, who invite the judge to their private office, and from which he issues his orders as if from the court, we have never sought to consult your Honor in private, and whatever we have asked has been asked openly in court, and in accordance with our firm conviction of our legal rights." The peculiarly elevated tone of Judge Barnard's court being thus established, the colloquy proceeded as follows :—

Judge Barnard. " I have been looking into this matter with some degree of care, and am of opinion that J. H. Clute, signing himself as county judge of Albany County, entertained jurisdiction of this matter as a criminal contempt, well knowing that it was a civil contempt. I am not quite sure but he should be brought before me to be punished for contempt."

Mr. Shearman. " I intend to follow these men as I have followed others. Four months ago we were in pursuit of certain parties, and they were finally overtaken as their coat-tails were disappearing behind a safe. I shall follow these men, if it is necessary and possible, to the end of time."

Judge Barnard. " I have some years to sit on this bench, and would as soon devote them to this as to anything else."

Mr. Shearman. " I am a young man also, having perhaps forty years at my disposal, and I am willing to devote them all to the pursuit of these men."

The first step in this forty years of persistent strife was thereupon at once taken by directing the sheriff to make a more detailed return. The individuals in question had, however, already fled the State, and Judge Barnard does not seem finally to have made up his mind to try conclusions with Judge Clute. Meanwhile the friends of the fugitives began to think that these proceedings had exceeded the limits of a jest. To fly the State was an ignominious thing ; it seemed to imply a confession of wrong-doing ; it could only be justified by the

uncertainty which existed in regard to the limits of judicial power in cases of contempt, and especially of the exercise of that power by Barnard himself. He had indicated his *animus* by his remarks in court. Resort was had to negotiation. One of the Ramsey counsel went to New York and threw himself in Barnard's way. The Judge assured him that there was no vindictiveness in his mind, and this interview led finally to some distinct understanding, reassured by which the fugitives one by one came back and presented themselves in court. After this the matter took the usual course. A reference was ordered, a mass of evidence was taken, the case dragged its slow length along, bail was reduced, a multitude of orders were issued, the wrath of Barnard gradually subsided, and, at last, the battle of the judges died away in a faint rumble of evidence, affidavits, explanations, and orders, and then was heard of no more.

One further order, and one only, was made at about this time, to which subsequent events lent a deep consequence. The Erie party had been completely foiled in its efforts to get possession of the much-coveted books. Now and again they would obtain some clew which led them to suspect their presence somewhere, but when they were sought they were gone. Agents went out of the State hunting for them, parties were examined in the State concerning them; a strange ignorance apparently existed as to their whereabouts. They seemed ubiquitous; at one time in Albany, at another in Pittsfield, and then suddenly in Troy; but always in the undisturbed possession of some friend of Mr. Ramsey. The Erie party was, in their absence, wholly unable to estimate its own relative strength as compared with that of its opponents. It was known, however, that a portion of the forfeited stock had been reissued, and now stood in the names of Groesbeck and others. Judge Barnard was therefore petitioned to appoint a receiver of this stock. The order was immediately granted, and Mr. William J. A. Fuller, an individual who had once been a clerk in Mr. Field's office, was named receiver, and directed to take immediate possession of the property. Armed with this order, and accompanied by a sheriff's officer, the new receiver proceeded at once to Mr. Groesbeck's office and demanded his

scrip. Upon Mr. Groesbeck's demurring somewhat at being deprived of his property in this summary way, Receiver Fuller proceeded to explain to him the mysterious terrors of a writ of assistance, which almost unknown process he intimated he had somewhere at hand. Mr. Groesbeck was tolerably familiar from long experience with all the usual judicial processes which are auxiliary to New York financial combinations, but writs of assistance were implements strange to him. The element of the unknown seems to have produced the desired effect, and Mr. Groesbeck delivered to Mr. Fuller certificates for nine hundred shares of stock. Under the same authority this gentleman further collected other certificates representing sixteen hundred additional shares. His duty was simply, at the most, to hold these shares pending the result of litigation as to the legality of their issue; he subsequently, as will be seen, took what may be called very enlarged views of these duties. Both parties had now gathered up their strength for the election which was to take place on the 7th of September.

It was provided in the by-laws of the company that the polls should be opened at twelve o'clock on the day of election, and should continue open for one hour; no transfers of shares were to take place during the thirty days next preceding the election; three inspectors were provided for, to be chosen each year by the stockholders; it was their duty to conduct the election; they were to be provided by the secretary with a list of stockholders entitled to vote, and to them also upon that day the transfer book was to be submitted. To this state of the law and the facts the two parties prepared to conform their plans. It was in the first place incumbent on the Ramsey party to restore the books to the offices of the company. This was done very secretly on the night preceding the election. A certain fictitious consequence was sought to be attached to the way in which this was done, owing to the fact that, when the messengers arrived with the books, instead of finding everything quiet and deserted as they had hoped, they discovered a large crowd gathered in front of the offices watching a conflagration across the river. The nature of their business was thus sure to be discovered. This was just what they wished to

avoid. After a moment's reflection it was decided to drive with the books to the rear of the building and put them in through a window. A basket and cord were found, the books were hauled up to the second-story window by the secretary, and by him secured in the safe of the company. Had the books, under the circumstances, been carried in through the front door, an officer armed with a warrant, and accompanied, if need be, by pick-locks and blacksmiths, would, in all probability, have been after them before morning. As it was, their return was a secret until it ceased to be of importance. Many unjustifiable features were assigned to the proceeding by the Fisk counsel; the one thoroughly unjustifiable one in their eyes was probably its success. It was never denied that the secretary of the company had, after the removal of the books and while they were sequestered, made many entries in them. These, however, were all of transactions concluded prior to the day when the books were to be closed, and included all of those transactions, whether favoring Ramsey or Fisk. Though much was hinted in regard to these entries, during the searching investigation they were subjected to in the subsequent trial, no instance of abuse of trust was even specifically alleged, much less proved. Nor indeed is it probable in itself that any such improper entries were made, as those who made them must at the time have known that they were unnecessary so far as securing a majority of the stock was concerned.

The aspect of affairs was not, on the whole, propitious to the Erie party as the day of election drew near. Their opponents held the books, which forced them to act very much in the dark, and the inspectors of election were understood to incline to the Ramsey interest. That a majority of the stock also inclined to it was a matter of less moment. The situation was full of difficulty; but the men called upon to meet it were full of resource. Their preliminary step was naturally to lay in a sufficient supply of judicial orders. The regular inspectors must, in the first place, be got out of the way. It was ascertained that they were not stockholders; the by-laws required that the inspectors should be chosen from among the stockholders. The Fisk-Gould counsel at once applied to Judge Clerke, a colleague of Judge Barnard's, in the First

District, and that magistrate granted, as a matter of course, an *ex parte* order, restraining the inspectors from acting as such. Having obtained this process from Judge Clerke, and filed it away for use at the proper moment, the counsel next applied to Judge Barnard. They quietly commenced a suit in the name of the Albany & Susquehanna Railroad Co. against Messrs Ramsey, Pruyn, Phelps, and Smith, the president, receiver, secretary, and leading counsel of the company, to recover damages for the abstraction of its books. On this complaint they obtained from Judge Barnard, on the evening of the day preceding the election, an order of arrest against the defendants, with bail fixed at \$25,000. This, be it remembered, was a judicial proceeding in New York, and not in Constantinople. Thus panoplied in orders, all parties repaired on the 6th to Albany. Mr. David Dudley Field came from the pleasant shades of his summer retreat among the hills of Berkshire, and Mr. Shearman, his associate in the practice of the law, had, for the nonce, quitted his offices in the Grand Opera House, in order himself to be at the right hand of his chief in conducting those delicate proceedings so skilfully and secretly planned in New York. The former gentleman was doubtless actuated only by a high sense of his professional duty to his clients, but Mr. Shearman may have been braced for the approaching crisis by the fell purpose he had recently avowed of pursuing even for forty years the miscreants who had failed properly to respect the orders of the distinguished magistrate with whom his own relations were such models of propriety. Having arrived in Albany, the last-named gentleman repaired at once to the capital, where he carefully informed himself as to the details of the election. This done, a general conference was held at the Delavan House, and the plan of operations was matured. The first object was to secure the organization of the meeting; that once done, arrangements of a satisfactory nature had been made to hold it. The trap was to be sprung just before the hour appointed for the election, when the regular inspectors were to be enjoined by the service upon them of Judge Clerke's *ex parte* order. The whole regular machinery being thus dislocated, a preliminary organization was to be effected, three

new and thoroughly sound inspectors were to be chosen, which would insure the control of the election and the subsequent possession of the Susquehanna Railway. Every detail was arranged, every person who was to play a part was designated and carefully taught his *rôle*. Such was the extreme caution used that Mr. Shearman himself wrote out the appropriate resolutions, and indorsed upon them the order in which, and the very second at which, they were to be offered ; while Mr. David Dudley Field personally handed certain of them to the leading performers, with further verbal instruction. Early the next morning there took place one of the most remarkable comparisons of watches on record. A special messenger visited the Dudley Observatory, and obtained the exact time, which was by him communicated to every active performer in the approaching farce ; or, rather, to all except the vulgar majority, to whom time was of no consequence, they being hired by the day, and constituting the fierce democracy of the occasion. These gentlemen arrived by the morning train from New York ; they were a very singular party, such as is more frequently seen in the neighborhood of the riotous election precincts of New York City than in the offices of respectable corporations. A breakfast was negotiated for them by an employee of the Fall River line of steamers, which constituted "Admiral" Fisk's naval command, at the saloon in the station ; and there they stood and fed at the counter, as rough a set of patriots as ever stuffed a ballot or hit from the shoulder. Some of them had coats and some had not ; their clothes were in various stages of dilapidation, as also were their countenances ; open shirts disclosed muscular breasts, and rolled-up trousers stockingless feet ; one man saved himself the trouble of rolling up both legs of his trousers by having only one ; they emphatically belonged to that class technically known as "roughs," a class subsequently defined by a witness as "men with scarred faces and noses, and black eyes." Under the circumstances it was little to be wondered at that, while they indulged in a "square meal," the keeper of the saloon gave directions to have his silver counted. Pending the feeding of the democracy, their proxies were in course of preparation ; at last all was ready, and between eleven and

twelve o'clock they were marched up fifty strong to the offices of the company.

Everywhere things proceeded exactly according to plan. On his way in a carriage to the corporation offices, Mr. Shearman happened to see the injunction of Judge Clerke served on two of the three inspectors as they were on their way to the meeting. This settled two points ; the injunction was a surprise, and the regular inspectors were disposed of. Judge Barnard's more important order was meanwhile sent to the sheriff, and the messenger was specially instructed by Mr. Shearman himself to hand it to him with this Roman injunction, " Sheriff, do your duty ! " This instruction was given at nine o'clock, but, curiously enough, the official had to consult his lawyer about the service of the process, and this lawyer happened to be one of Mr. Fisk's numerous legal advisers ; with that gentleman he remained in counsel until half past eleven o'clock, when at last he was advised to make his arrests at once. By this time all the parties were collected at the offices of the company. It might fairly be called a mixed society. Mr. Van Valkenburg had tendered to the Governor's receivers a guard of men from the shops of the road, but these had been refused, and a large force of Albany police were on duty in the building. Some thirty of the employees of the company were on hand against an emergency, but under positive orders not to enter the offices until sent for. Up stairs was a large array of stockholders, directors, real and contingent, a few receivers, and a score or two of counsel. Then came the New York importation of ruffians, who were divided into squads under the command of divers officials of the Fall River boats, the Erie Railway, and the Grand Opera House ; thus marshalled, and each man proxy in hand, they were marched into the room and formed in line at one end of it. Besides these there was present a choice collection of Albanians of somewhat similar character, either neutrals or inclined to Mr. Ramsey. How they got there did not appear, but if the instructions to the police to allow no one but holders of certificates of stock to pass up stairs were enforced that day, these certificates were certainly held by a great many strange characters. The Erie party, prominent among whom were Messrs. David Dudley Field, Thomas G. Shearman, and James

Fisk, Jr., took possession of the directors' room, which their assortment of "New York stockholders" wellnigh filled; in the adjoining room were Messrs. Ramsey, Pruyn, and their friends and advisers.

Exactly at fifteen minutes before twelve o'clock, by observatory time, one Colonel North, to whom that rôle in the Erie parts had been assigned, moved the organization of the meeting. No opposition was encountered, and the gentleman cast for the part of chairman was duly installed. The resolve indorsed "No. 1, Immediate," was then recited by Colonel North, Mr. Shearman standing at his side watch in hand, and the old inspectors were voted out of office and the new ones in. The officers thus elected at once retired to the treasurer's room, where the poll was to be held, whither they were immediately followed by Mr. Shearman, still watch in hand; having satisfied himself that all was in readiness there, this master of ceremonies immediately returned to the side of Colonel North and resumed his comparison of timepieces. At last he said: "It is now one minute of twelve; keep your watch open and be sure that you offer these resolutions at a little after twelve, and not before; and, in order to make sure, wait a few seconds after twelve, but not more than fifteen seconds." With this parting injunction he left the Colonel to his own devices, and "at thirty seconds of twelve" returned to the inspectors' room, just in time to find an injunction served on those officials. It was issued on the complaint of David Groesbeck, and enjoined an election unless the stock held by him was first voted on. Now, at last, was developed the entire significance of the *ex parte* order under which Mr. William J. A. Fuller was made receiver of this stock. There were twenty-five hundred shares of it; Mr. Groesbeck had paid for several hundred of them; he was at that very moment in the next room; he was on every ground bitterly opposed to the Erie direction, and to the parody of an election then in process; Mr. William J. A. Fuller was the receiver of the stock, and it was to this receiver, now conveniently standing at his elbow, that Mr. Shearman turned and remarked: "An injunction has been served restraining this election from going on, unless the votes on the twenty-four hundred shares which you hold are first received, and you had better vote." Thus ap-

pealed to, Mr. Fuller modestly replied that he had not intended to vote at this election, but having been appointed receiver, he deemed it his duty to do all in his power to preserve the property, and concluded his statement by giving as a reason for his vote that the ticket which he offered was composed of men of the highest character and ability, whose election would best secure the rights of all parties to the litigation. At the close of these remarks he actually voted, and the curious spectacle was exhibited of a court of equity taking a man's stock away from him on the ground that it was illegally issued and could not be voted on at all, and then proceeding to vote on it itself, before the man's face and against his wishes. Viewed calmly and after the event, such a proceeding strikes one chiefly as an extremely droll joke. The climax of the humorous, however, was not attained until some months later, when Mr. Fuller gravely stated in court that, as a receiver, he considered it his duty to vote on stock without consulting the wishes of its ostensible owner, and that for his services as receiver in this case he had as yet received no remuneration, but expected the regular fees, amounting to \$15,000. After Mr. Fuller had thus relieved Mr. Groesbeck of the trouble of voting, and after the meeting in the next room had gone through a nominal reorganization to meet the letter of the law, the polls were declared open. The inspectors were withal curiously careless, or too intent on the passage of time to think of aught else; they certainly neglected to be qualified by taking oath as to the performance of their duties, which was specially prescribed in the by-laws; neither did they use any ballot-box, other than the straw hat of one of their number. In this, however, the ballots were deposited, and the election went briskly on for some fifteen minutes, when, under the names of John Doe, Richard Roe, and James Jackson, the inspectors were again enjoined, this time from any further proceedings. Most of their tickets had, however, already been voted, and this injunction was violated by the reception of others, subsequently offered, only in a moderate degree.

Meanwhile events did not stand still in the little library adjoining the directors' room, where Mr. Ramsey and his friends were collected. The sheriff of Albany, after leaving the office

of his legal adviser, proceeded to "do his duty." As Mr. Ramsey was intently listening in the president's office to Colonel North, who was moving the organization in the next room, some one suddenly touched his arm, and he became conscious of the sheriff at his side. Here was a thunderbolt. At the very instant when his presence was most necessary, when all depended on the full possession of his liberty and his faculties, he found himself, the secretary of the company and its legal adviser, under arrest. The thing could not have been better timed. To understand the full possible effect of this move and the spirit in which it was made, it is necessary to bear in mind a remark of Mr. Shearman in his subsequent testimony: "I did n't want to lose a second's time, because I knew the value of time in this case, and I knew that the whole question would have to depend upon the question of which meeting was organized first." The officials of the road were therefore arrested just when they should have been organizing their meeting. Nor did the possible benefit to be derived from this measure stop here. The election was limited to one hour, and the sheriff was instructed "to do his duty." He might have effected his arrest at ten o'clock; but had he done so, the parties would have been bailed at once, and the arrest might as well not have been made. Having been made at exactly the right moment, the sheriff might now further construe it to be his duty to remove the prisoners to his office, there to arrange their bail. The votes on which Mr. Ramsey relied were, of course, held by him in the usual form of proxies; they were, in fact, on this day so cast by him. Could he, therefore, be held in durance, away from the offices, by any fictitious delays and objections, for one short hour, the election would be over and irrevocably decided against him. The construction the sheriff should give to "his duty" in the premises was very vital, and fully warranted his lengthy interview with that gentleman who was the common adviser of himself and the Erie Railway Company. The whole proceeding certainly spoke volumes for the ingenuity and resource of those who engineered it. In its style it could not have been improved.

Mr. Ramsey was thus a prisoner. He proposed at first to leave the room to consult his friends, but was requested by the

sheriff to remain in it, and here he was soon visited by Mr. David Dudley Field, of counsel for the Erie Railway Company, who satisfied himself that the sheriff was doing "his duty" by taking a comprehensive glance at the situation. Finding this greatly to his mind, he then proceeded, with a smile indicative of profound satisfaction and with his thumbs in the arm-holes of his waistcoat, to inquire of Mr. Ramsey as to the present condition of his health. Mr. Ramsey has the reputation of being a remarkably cool and imperturbable man, so that now, when his counsel, Mr. Smith, entered the room in a state of intense excitement and indignation, and also under arrest, he received simply a direction to go back and attend to the election, while Mr. Ramsey himself effected the bail arrangements. It is not clear whether the sheriff lacked nerve to construe his duty as he might have done, or whether the delay already occasioned was considered sufficient; at any rate, though he certainly arrested his prisoners at exactly the proper moment, he did not remove them from the building. He was, indeed, even provided with blank bail bonds, which were produced and filled, though not until objection had been made to the security of one or two gentlemen notoriously worth millions; and this done, the prisoners were released. All this had occupied half an hour; on the theory of Mr. Shearman it was now too late, the moment had passed; the *coup* had been completely successful. Mr. Smith had, indeed, gone back and organized a stockholders' meeting in the hall of the building; but not until ten minutes after twelve, and when the polls of the other organization had been long open. The Erie party were, in their own belief, in possession of the Albany & Susquehanna Railroad beyond a peradventure.

Before going on with the narrative, a few words may here be not out of place concerning the much-discussed question of the limits, if there be any, of the duty which counsel owe to their clients. The celebrated dictum of Lord Brougham in this regard is sufficiently general in its terms: "An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, *THAT CLIENT AND NONE OTHER*. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and

among others to himself, is the highest and most unquestioned of his duties ; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client's sake ! ”

Certainly no counsel could have acted more fully up to both the letter and spirit of this famous rule, than did Messrs. David Dudley Field and Thomas G. Shearman, of counsel for the Erie Railway Company, on this notable occasion. They even “ cast to the wind ” the single faint limitation conveyed by Lord Brougham in the words “ to *save* ” and “ to *protect* ” by all “ expedient means ” ; and, in the intense fervor of their devotion to their clients, had recourse in aggressive proceedings to processes of law which were subsequently judicially characterized as procured “ in aid of fraudulent purposes.” Attending one's clients to corporation meetings, at the head of a band of “ rude, rough, and dangerous persons,” and there acting as the master of ceremonies, through the parody of an election, was a case which undoubtedly Brougham would have included in his definition, had it occurred to him ; but it probably escaped his notice, from the fact that, since the fall of the Roman Republic, such proceedings have not been usual. The ingenious device, also, of arresting one's opposing counsel and holding him to \$ 25,000 bail, at the moment when his professional services are likely to become peculiarly necessary, is a feature in legal amenities with which the English barrister could not have been expected to be familiar. A high authority has now, however, established these as part of the duties of the American advocate. Instances of similar devotion will, therefore, unless the now obsolete practice of disbarring should chance to be revived, probably hereafter become more common than they hitherto have been. The use of unusual processes of court, unpleasantly suggestive of *lettres de cachet*, quietly procured and suddenly brought in play, would seem also to have met of late with an undeserved odium. Whether these will again arrive at the great efficiency as an element in litiga-

tion which they once attained in France will, perhaps, depend upon the degree of fidelity with which sheriffs do their duty. For the shortcomings of such officials, advocates naturally cannot be held accountable, even by the most exacting of clients. The client, moreover, in whose defence Brougham was prepared, if need be, "to involve his country in confusion" was the Queen of England; which, indeed, cannot but cause the deeper sense of a professional devotion, no less reckless, exerted in furtherance of the schemes of Mr. James Fisk, Jr.

To return from this abstract digression to the narrative, little remains to be said of the election after the release of Mr. Ramsey was effected. While bail was being procured, and the necessary bonds executed, a second meeting had been organized by Mr. Smith in the hall before the offices, and this meeting had proceeded to choose inspectors, who were duly sworn and received from the secretary the prescribed list of stockholders. They then opened their polls in the same room and at the same desk at which opposition inspectors were still sitting. Mr. Shearman immediately stepped in front of them and began, on various grounds, to challenge every vote. Of course his challenge was disregarded, but the process was kept up by himself or others, until, towards one o'clock, both polls were declared closed. Neither party attempted to vote at the polls of the other, nor was there any disorder or disturbance. The two boards then canvassed their votes; the Erie board declared that the ticket voted for at their polls had received 13,400 votes, and was elected. Shortly afterwards the Ramsey board declared that the ticket voted for at their poll had received 10,742 votes, and was elected. The two boards of directors thus chosen then met and organized, the one by the choice of Colonel Church as president, and the other by the re-election of Mr. Ramsey; and having then sufficiently regarded each other from the opposite sides of the directors' room, in due time they adjourned.

The election was over, and apparently nothing was decided by it. Each of the boards elected claimed to be the regular and only lawful one, and neither of them in any way recognized the other. Fortunately the agents of Governor Hoffman were still in actual possession. The Erie party had, indeed,

endeavored to take advantage of this fact, by including in their list of directors both Messrs. McQuade and Banks, who were then operating the road under the authority of the Governor. This move wholly failed. Both of these gentlemen instantly and peremptorily withdrew from the board when notified of their election. Governor Hoffman was the one person now responsible, and he very wisely called upon the courts to decide who was legally entitled to the possession of the road. At his direction the Attorney-General, immediately after the election, began a new suit, in which all parties litigant were included, and a general decision on the merits was prayed for. This was the only way to cut the knot. The previous litigation was in a state of hopeless chaos. Twenty-two suits had been begun, a score of injunctions had been issued, numberless orders had been made, and both parties now stood ready to continue the same style of warfare, just as long as any judge could be found who disregarded the duties of his position on the one side, or who did not lack nerve on the other.

The action brought by the Attorney-General came on for trial before Justice E. Darwin Smith, at Rochester, on the 29th of November succeeding the election. The intervening time had been wasted by neither party. Messrs. Fisk and Gould had utilized it in those manipulations of the gold market, which had resulted in the celebrated explosion of September 24th, long to be famous as the black Friday in Wall Street annals. Mr. Ramsey, meanwhile, had confined his attention to the quarrel already existing, and had carried the war vigorously into Africa, assailing the Erie management in its own stronghold through the suit of *Ramsey vs. Erie et als.* Writs, orders, injunctions, receiverships, and conflicts of jurisdiction had become matters of such daily occurrence as hardly to excite a passing notice, and the complications which had grown up around the Erie ring were only exceeded by the scandal they caused. Hitherto, strong in the protection of the more reckless of the city judges, Messrs. Gould and Fisk had suffered no material defeat; they had, indeed, in so far as the law was concerned, carried all before them; for to them the law was simply a process for annoying others and obstructing all that was calculated to annoy them. Foiled in their attempt

to get control of the Susquehanna Road by force, they did, indeed, now try to get it by negotiation ; they proposed a compromise of all existing disputes on the basis of a lease of this road by the Erie for a term of ninety-nine years, at a rent equal to seven per cent on its bonds and stock outstanding, with a thirty per cent stock dividend flung in as a bonus. The Susquehanna people listened to the proposal, but it finally appeared that no further guaranty than the word of the Erie managers was contemplated. The Atlantic & Great Western Railroad had already illustrated the value of that. Like Falstaff's tailor, the Susquehanna people "liked not the security"; and the other party, like the fat old knight himself, "had as lief they would put ratsbane in my mouth as offer to stop it with security." The negotiation fell wholly through, and nothing remained but the arbitrament of a country justice of the Supreme Court.

At the end of November the case was in order for trial. The Executive, the Attorney-General, the court, and the Ramsey counsel were ready and in earnest. The usual motions for delay from the other side were received with little favor. It was shown that another suit, in which Messrs. Fisk and Gould and their leading counsel were engaged, was then on trial before Judge Barnard. It was of no avail ; the parties were ordered to proceed, and the case before Judge Barnard had to be postponed. The trial lasted ten days, and a vast amount of evidence was put in. Mr. Fisk and Mr. Gould were conspicuous by their absence from the witness-stand, but their counsel were put upon it, and Messrs. Harris and Shearman each told his own story. Some features of the evidence and incidents of the trial were far from creditable. Among these may especially be mentioned an attempt to create an impression that Mr. Ramsey had once been under an indictment for forgery. So grave a charge seemed most unlikely to be made without some shadow of reason. In this case, however, it was wantonly advanced, and even the machinery through which it was manufactured was subsequently exposed. Naturally this proceeding and others reacted violently on those who had sought to derive advantage from them. Public feeling in the court-room and in the city of Rochester grew very strong as the case proceeded,

showing itself in ways not to be mistaken. As the case was on the equity side of the court, there was no intervention of a jury, no chance of an inability to agree on a verdict. After the evidence was all in, and the case had been elaborately argued by Mr. David Dudley Field for the Erie party, and by Mr. Henry Smith for the Susquehanna party, Judge Smith took the papers, but reserved his decision. It was January before this was made public.

There are cases where a judge upon the bench is called upon to vindicate in no doubtful way the purity as well as the majesty of the law ; cases in which the parties before the court should be made to feel that they are not equal, that fraud is fraud even in a court of law, — that cavilling and technicalities and special pleading cannot blind the clear eye of equity. It is possible that even a judicial tone may be overdone or be out of place. There are occasions when the scales of justice become almost an encumbrance, and both hands clutch at the sword alone. Whether the magistrate upon whom the decision of this cause devolved was right in holding this to be such an occasion is not now to be discussed ; it is enough to say that his decision sustained at every point the Ramsey board, and crushed in succession all the schemes of the Erie ring. The opinion was most noticeable in that it approached the inquiry in a large spirit. Its conclusion was not made to turn on the question of a second of time, or a rigid adherence to the letter of the law or any other technicality of the pettifogger ; it swept all these aside and spoke firmly and clearly to the question of fraud and fraudulent conspiracy. All the elaborate comparison of watches, and noting of fractional parts of a minute, which marked the organization of the Erie meeting were treated with contempt, but the meeting itself was pronounced to be organized in pursuance of a previous conspiracy, and the election held by it was “irregular, fraudulent, and void.” The scandals of the law — the strange processes, injunctions, orders, and conflicts of jurisdiction — were disposed of with the same grasp, whenever they came in the path of the decision. The appointment of Fuller as receiver was declared to have been made in a “suit instituted for a fraudulent purpose,” and it was pronounced in such “clear conflict with the law and set-

tled practice of the court" as to be explicable only on a supposition that the order was "granted incautiously, and upon some mistaken oral representation or statement of the facts of the case." The order removing the regular inspectors of election was "improvidently granted" and was "entirely void"; and the keeping it back by counsel, and serving it only at the moment of the election, was "an obvious and designed surprise on the great body of stockholders." The suit under which the Barnard order of arrest was issued against Ramsey and Phelps was instituted without right, the order of arrest was unauthorized, the order to hold to bail "most extraordinary and exorbitant," and was procured "in aid of fraudulent purposes." The injunction forbidding Ramsey to act as president of the company was "entirely void." The three thousand shares of forfeited stock reissued to Mr. Groesbeck were pronounced "valid stock," and numerous precedents were cited in which the principle had been sustained. Even the injudicious subscription for the nine thousand five hundred new shares of stock by Ramsey and his friends, on which they had not attempted to vote at the election, was declared, in point of law, regular, valid, and binding. Upon the facts of the case the decision was equally outspoken; it was fraud and conspiracy everywhere. "The importation and crowding into a small room" of a large number of "rude, rough, and dangerous persons," and furnishing them with proxies that they might participate in the proceedings of the meeting, "was a gross perversion and abuse of the right to vote by proxy and a clear infringement of the rights of stockholders, tending, if such proceedings are countenanced by the courts, to convert corporation meetings into places of disorder, lawlessness, and riot." Finally, costs were decreed to the Ramsey board of directors, and a reference was made to Samuel L. Selden, late a judge of the Court of Appeals, to ascertain and report a proper extra allowance in the case, and to which of the defendants it was to be paid.

The legal scandals of the case were not yet quite exhausted. No sooner was this decision announced and telegraphed to New York, than the Erie counsel at once had recourse to the judges of that city. As a matter of course, an *ex parte* order was instantly granted, staying the entry of judgment. It

reached Rochester a few hours too late ; the judgment was entered. The next day a new order was obtained, staying all proceedings under the judgment ; and this was served on Messrs. Banks and McQuade, who were still in possession of the road. Recourse was had to Judge Peckham, who quietly declared the stay of no effect, and granted an order putting the Ramsey board in possession. Then at last the keys were delivered to them. The Erie counsel were not yet satisfied. A motion was made to vacate the judgment. This was supported by affidavits of counsel of the most unusual nature. Imputations of unfairness, irregularity, bias, and conduct otherwise wholly unbecoming a magistrate, were advanced against Judge Smith. The four leading lawyers of the defeated party then united in a certificate, which concluded with these singular words : " We have examined the opinion of Mr. Justice Smith in this cause, and, in our judgment, it is in every material part erroneous, either in fact or in law." It may be necessary to mention here that this was a certificate of counsel on the losing side of a decided case, applying to one judge of the Supreme Court of New York, to vacate a judgment just entered by another judge of the same court. It ought to be unnecessary to add that the assumptions on which the motion was based were pronounced " simply monstrous " ; and the affidavits were ordered to be stricken from the record as " irrelevant and impertinent." Nothing now remained to the Erie faction but the slow process of appeal, with their opponents in actual possession.

The struggle was over. Long before any action could be taken on the decision of Judge Smith, at the general term of the court, the Albany & Susquehanna Railroad was beyond the reach of Fisk or Gould or the Erie Railway. Early in February, 1870, the Ramsey direction leased the whole property in perpetuity, and on very favorable terms, to the Hudson & Delaware Canal Company. This arrangement transferred the struggle from the comparatively weak shoulders of the railroad itself to those of one of the most powerful and wealthy corporations in the country. With it the Erie managers could not afford to quarrel, so they were fain to profess themselves satisfied with the result, and to desist from the contest.

Meanwhile the Hon. Samuel L. Selden was busy over his reference; and the case was wellnigh forgotten before he made his report. When it was made it was calculated to revive a very fresh recollection of the litigation in the minds of Mr. Fisk's board of directors. This was composed of thirteen individuals, of whom Messrs. Fisk and Gould were two. The report of Mr. Selden was long and very minutely drawn; it was a document likely to be accepted by the court, and not easily overthrown on appeal. "In view of the whole history of this extraordinary case," and in consideration of the assumption by the Albany & Susquehanna Railroad Co. of the entire expenses of the litigation, the sum of ninety two thousand dollars was fixed upon as a just and proper extra allowance to be paid by the persons constituting the Fisk board of directors to those persons constituting the Ramsey board.

CHARLES F. ADAMS, JR.

ART. II. — ON THE ORIGIN AND GROWTH OF PUBLIC OPINION IN PRUSSIA.

PRUSSIA has had the advantage of a long childhood, which it is well known is one of the privileges of a northern nature. In round numbers it may be said that, during the first hundred years of her existence, she did little more than grow and feed. Her history in those days was the history of her king and father, who maintained, protected, and educated her, and in whose paternal solicitude she could place the fullest confidence. His yoke was light. The people paid willingly the small taxes which secured to them complete exemption from political cares and civic responsibilities. But it is evident that, although they loved their king, they could have nothing in common with him. His cares were not their cares, his ambitions not their ambitions. King and people lived, so to speak, in different planes.

It will be seen that this intellectual parallelism was not a mere accident, nor, as might naturally be supposed, an initial